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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,720	03/19/2004	Stephen Dull	10761.1527-00	7513
81331	7590	02/03/2010		
Accenture/Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue Washington, DC 20001-4413			EXAMINER PARKER, BRANDI P	
			ART UNIT 3624	PAPER NUMBER
			NOTIFICATION DATE 02/03/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/804,720	<b>Applicant(s)</b> DULL ET AL.	
	<b>Examiner</b> BRANDI P. PARKER	<b>Art Unit</b> 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/5/2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-14 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-14 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following is a Final Office action in response to communications filed on 11/5/2009. Claims 1-6, 8-14 and 27-30 are pending. Claims 1, 9, 27 and 29 have been amended.

### ***Response to Arguments***

2. Applicant's arguments (see pages 15-16), filed 11/5/2009, with respect to the rejection of claims 1, 9 and 27 have been fully considered and are persuasive. The rejection of claims 1-6, 8-14 and 27-28 under 35 U.S.C. 101 has been withdrawn.

Applicant's arguments (see pages 17-20), filed 11/5/2009, with respect to the rejection of claims 1-6, 8-14 and 27-30 have been fully considered and are persuasive. The rejection of claims 1-6, 8-14 and 27-30 under 35 U.S.C. 112, first paragraph has been withdrawn.

Applicant's arguments (see pages 20-21), filed 11/5/2009, with respect to the rejection of claims 1-6, 8-14 and 27-28 have been fully considered and are persuasive. The rejection of claims 1-6, 8-14 and 27-28 under 35 U.S.C. 112, second paragraph has been withdrawn.

Applicant's arguments (see pages 21-25); filed 11/5/2009, with respect to the rejection of claims 1-6, 8-14 and 27-28 under 35 USC 103 have been fully considered, however, are unpersuasive.

With respect to Applicant's argument that Phelan fails to teach or suggest "determining, by the regression analysis tool module, brand loyalty or brand image factors and information about the brand loyalty or brand image factors", Examiner respectfully disagrees. Applicant states on pages 22-23 that Phelan's controllables are different from what Applicant's claimed modeler controls because in Phelan, the controllables are included in the regression model, while Applicant's factors are determined by the regression analysis tool module. Applicant's regression analysis is applied to data to determine the relative impact independent variables have on an end result and measures how an outcome will be affected by changes in input conditions (paragraph 0024). Furthermore, Applicant's regression analysis may be used to identify the impact of marketing activities on revenue and profits (paragraph 0036). Lastly, Applicant's regression analysis is used to determine the relationships between brand drivers and increments in price (paragraph 0040).

Similar to Applicant's regression analysis, Phelan teaches a marketing mix model that uses statistical regression techniques that determines the impact of the components of the market mix on specific business measures (paragraph 0127). Also, the marketing mix model in Phelan analyses the impact of brand metrics (information about brand factors) (paragraph 0140) and analyses brand performance (Paragraph 0106). Based on the foregoing, Phelan in view of Haigh and Pati does teach or suggest "determining, by the regression analysis tool module, brand loyalty or brand image factors and information about the brand loyalty or brand image factors".

With respect to Applicant's argument that Phelan fails to teach the results of the determining step are based on results of the first analysis and results of the second analysis, Examiner respectfully disagrees. Applicant's determining step is by regression analysis, where the end result measures how an outcome will be affected by changes in input conditions (paragraph 0024). Similar to Applicant's determining step, Phelan teaches a system comprising multiple marketing analyses (paragraph 0134), as well as a regression analysis (paragraph 0127). Phelan further teaches an analytics engine that creates an analysis path through the one or more analyses (paragraph 0137), and the first analysis is further linked to the second analysis (paragraph 0145). Thus, Phelan in view of Haigh and Pati does teach or suggest where the results of the determining step are based on results of the first analysis and results of the second analysis.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, 8-14 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phelan et al (US 2004/0093296) in view of the June 1999 David Haigh publication "Understanding the Financial Value of Brands" and passages from the 2002 book written by Debashis Pati entitled "Marketing Research".

With respect to claims 1-8, 8-14 and 27-30, Phelan teaches:

- a. providing a system comprising a processor, at least one memory storing data and instructions, a display device, a user interface, and distinct software modules embodied on a computer-readable medium (paragraph 0051-0052, regarding market client system structure);
  - i. wherein the distinct software modules comprise a first analysis tool module, a second analysis tool module, and a regression analysis tool module (paragraph 0134, regarding marketing analysis system; paragraph 0127, regarding regression analysis); and
  - ii. wherein the distinct software modules are configured to access the at least one memory for data and instructions and, when executing the instructions, to perform the computer-implemented steps on the processor of: executing a first analysis by the first analysis tool module; executing a second analysis by the second analysis tool module; a third analysis, by the regression analysis tool module, wherein results of the determining step are based on results of the first analysis and results of the second analysis (paragraph 0145, regarding linking a first guided analysis with a second or multiple analysis; paragraph 0137, regarding an analytics engine that creates an analysis path through the one or more analyses ; paragraph 0127, regarding regression analysis).

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- iii. determining, by the regression analysis tool module, brand loyalty or image factors and information (paragraph 0127, regarding statistical regression analysis on the model factors)

Phelan teaches the statistical and probability analysis, as well as the modeling of consumer behavior response to marketing efforts of brands. Phelan does not explicitly teach an image/equity, customized brand pyramid, trade-off, econometric or brand conversion analysis tool modules or outputting a display of brand factors. However, Haigh teaches:

- iv. wherein the first analysis tool module and the second analysis tool module are chosen from the group comprising: an image/equity analysis tool (page 26-29, regarding brand equity analysis), a brand pyramid analysis tool (page 37-39, regarding brand pyramid analysis), a trade-off analysis tool (page 12, regarding trade-off analysis), a probability simulator (page 42-43, regarding “what-if” scenarios), an econometric analysis tool (page 26, regarding econometric modeling of empirical data), a behavioral analysis tool (page 28, regarding a brand’s future performance based on consumer behavior), and a brand pyramid conversion analysis tool (page 39-42 regarding brand conversion profile).

The brand pyramid in Haigh consists of 5 tiers and does not expressly state that additional tiers can be added to make the pyramid customizable. However, the concept of a brand pyramid can be implemented with any tiers that represent any metric or brand measurement for a particular company or industry, and the brand pyramid

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analysis provided in the Haigh can be repeated for each additional tier that may be added. Therefore, it would have been obvious to one with ordinary skill in the art to make the brand pyramid customizable for a particular company or industry.

It would have been obvious to one of ordinary skill in the art to include the business system of Phelan with the ability to teach an image/equity, customized brand pyramid, trade-off, econometric or brand conversion analysis tool modules as taught by Haigh since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Phelan in view of the Haigh article does not directly teach outputting a display of brand factors or an image perceptual map. However, Pati teaches the output and display of image perceptual maps of brand factors (page 139-141, regarding multi-dimensional scaling and perceptual maps), and identifying and quantifying the brand development opportunities based on the display (page 139-141, regarding multi-dimensional scaling and perceptual maps for brands).

It would have been obvious to one of ordinary skill in the art to include the business system of Phelan in view of Haigh with the ability to display image perceptual maps of brand factors as taught by Pati since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/  
Examiner, Art Unit 3624  
January 31, 2010